



CLOSED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	DORIAN CARTER, as an)	Case No. CV 13-09176 MWF (Ex)
12	individual)	
13)	ORDER DENYING EX PARTE
14	Plaintiff,)	APPLICATION TO DISQUALIFY JUDGE
15)	MICHAEL FITZGERALD
16	v.)	
17)	[DKT No. 5]
18	TRACY SHEEN, as an)	
19	individual; TRACY SHEEN, as)	
20	purported trustee of the)	
21	Declaration Establishing the)	
22	Eugenia M. Ringgold Living)	
23	Trust Dated February 28,)	
24	1997; NATHALEE EVANS, as)	
25	claimant to status of)	
26	trustee of Declaration)	
27	Establishing the Eugenia M.)	
28	Ringgold Living Trust Dated)	
	February 28, 1997 and to)	
	status as executor of the)	
	estate of Eugenia M.)	
	Ringgold,)	
)	
	Defendants.)	
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25 This matter comes before the court on Defendant Nathalee
26 Evans' Ex Parte Application to Disqualify Judge Michael Fitzgerald.
27 Having considered Defendant's submissions, the court DENIES the
28 motion and adopts the following order.

1 **I. Background**

2 On December 12, 2013, Defendant Nathalee Evans filed a Notice
3 of Removal of the instant case to this court. (DKT No. 1.)

4 On December 23, 2013, the case was transferred from Judge
5 Fernando M. Olguin and Magistrate Judge Stephen J. Hillman to Judge
6 Michael W. Fitzgerald and Magistrate Judge Charles F. Eick for all
7 further proceedings. (DKT No. 3.) The transfer was made pursuant to
8 General Order 08-05. (Id.) Judge Fitzgerald consented to the
9 transfer on the basis that the instant case is related to another
10 case over which he previously presided, In re the Estate of Eugenia
11 M. Ringgold, Case No. 12-08433/12-10303.

12 On December 30, 2013, Judge Fitzgerald issued an order
13 remanding the instant action to Los Angeles Superior Court. (DKT
14 No. 4.) Judge Fitzgerald remanded the case *sua sponte* based upon
15 his finding that the court lacks subject matter jurisdiction over
16 the case. Specifically, Judge Fitzgerald reached this conclusion
17 based upon his findings that (1) removal is improper under 28
18 U.S.C. § 1441(b) because complete diversity is lacking as the
19 removal states that Defendant Tracy Sheen is a citizen of
20 California, (2) removal is improper under 28 U.S.C. § 1334 because
21 neither the complaint nor cross-complaint arise in or are related
22 to a bankruptcy proceeding, and (3) removal is improper under 28
23 U.S.C. 1443(1)-(2) because no showing has been made that any of the
24 purported civil rights claims listed in the removal papers are
25 untenable in California state court. (Id. at 2-3.)

26 On January 1, 2013, Evans filed this ex parte application
27 seeking the disqualification of Judge Fitzgerald and the striking
28

1 of the December 23, 2013 transfer of the case to Judge Fitzgerald.
2 (DKT No. 5.)

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4 **II. Discussion**

5 A judge "shall disqualify himself in any proceeding in which
6 his impartiality might reasonably be questioned" and in proceedings
7 in which "he has a personal bias or prejudice concerning a party,
8 or personal knowledge of disputed evidentiary facts concerning the
9 proceeding." 28 U.S.C. § 455(a),(b)(1). "The test for personal
10 bias or prejudice in section 144 is identical to that in section
11 455(b)(1)" United States v. Sibla, 624 F.2d 864, 867 (9th
12 Cir. 1980). "Consequently, a motion properly brought pursuant to
13 section 144 will raise a question concerning recusal under section
14 455(b)(1) as well as section 144." Id. The Ninth Circuit has
15 articulated the standard for disqualification under § 455 as
16 follows:

17 The test under § 455(a) is whether a reasonable person with
18 knowledge of all the facts would conclude that the judge's
19 impartiality might reasonably be questioned. Typically, a
20 judge's partiality must be shown to be based on information from
21 extrajudicial sources, although sometimes, albeit rarely,
22 predispositions developed during the course of a trial will
23 suffice. In the instance where the partiality develops during
24 the course of the proceedings, it can be the basis of recusal
25 only when the judge displays a deep-seated and unequivocal
26 antagonism that would render fair judgment impossible.

1 F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc., 244 F.3d
2 1128, 1144-45 (9th Cir. 2001) (internal quotations and citations
3 omitted).

4 In the present case, Evans has not established that Judge
5 Fitzgerald's impartiality could reasonably be called into question.
6 First, Evans asserts that impartiality is demonstrated because
7 Judge Fitzgerald "engaged in conduct to take control of a case when
8 the actual assigned judge had not relinquished authority and
9 jurisdiction." (App. at 4.) The statement appears to refer to the
10 December 23, 2013 transfer of the case to Judge Fitzgerald.
11 However, contrary to Evans' contention, the court finds that the
12 case was properly transferred to Judge Fitzgerald under the
13 standard procedures of the Clerk of the Court pursuant to General
14 Order 08-05, section 5.2. There is no indication that Judge
15 Fitzgerald proactively sought to take control of the case. Rather,
16 as noted, Judge Fitzgerald consented to a transfer of the case to
17 his docket, as recommended by the Clerk of the Court, because it
18 was related to another case over which he presided, In re the
19 Estate of Eugenia M. Ringgold, Case No. 12-08433/12-10303.

20 Second, Evans appears to argue that the December 30, 2013
21 order remanding the case to state court demonstrated personal bias
22 because Judge Fitzgerald issued the order without Evans or her
23 counsel having the opportunity to appear or brief the matter.
24 (App. at 4.) However, the court finds that Judge Fitzgerald's order
25 remanding the case *sua sponte* was proper and consistent with Ninth
26 Circuit authority providing that a district court has the power to
27 remand a case *sua sponte* when it lacks subject matter jurisdiction.
28 See United Investors Life Ins. V. Waddell & Reed Inc., 360 F.3d

1 960, 966-67 (9th Cir. 1994) ("[A] district court's duty to
2 establish subject matter jurisdiction is not contingent upon the
3 parties' arguments. . . . [T]he district court had a duty to
4 establish subject matter jurisdiction over the removed action *sua*
5 *sponte*, whether the parties raised the issue or not.") The lack of
6 a necessity for briefing or hearing appears to have been
7 particularly apparent in this case, given the high burden imposed
8 on removing parties to demonstrate that jurisdiction may be
9 properly exercised and the fact that Judge Fitzgerald found removal
10 facially improper from the removal documents. See Gaus v. Miles,
11 Inc., 980 F.2d 564, 566 (9th Cir. 1992) (explaining that removal
12 statutes are strictly construed against removal jurisdiction, that
13 the removing defendant bears the burden of establishing that
14 removal is proper, and that federal jurisdiction must be rejected
15 if any doubt exists as to the propriety of removal); DKT No. 4 at
16 2-3.

17 Third, Evans appears to contend that there cannot be a fair
18 hearing before Judge Fitzgerald because in his January 11, 2013
19 order in In re the Estate of Eugenia M. Ringgold, denying Evans' ex
20 parte application seeking to consolidate cases, Judge Fitzgerald
21 concluded his order with the following admonition, which referred
22 to a case that was not before him:

23 Counsel seems intent on repeating the behavior that led to her
24 being deemed a vexatious litigant. See Ringgold-Lockhart v.
25 County of Los Angeles, CV 11-1725-R, Docket No. 136. The Court
26 will closely scrutinize any additional filings and will not
27 hesitate to impose sanctions. Fed. R. Civ. P. 11(c)(3). The
28 Court would also consider whether counsel's conduct warrants a

1 referral to the Standing Committee on Discipline. See Local
2 Rule 83-3.1.

3 (See App. Ex. 6 at 2, Order Denying Ex Parte Application, In re the
4 Estate of Eugenia M. Ringgold, Case No. 12-08433/12-10303, DKT No.
5 19; App. at 2). Evans appears to argue that the reference to
6 Ringgold-Lockhart v. County of Los Angeles constitutes improper
7 reliance on extrajudicial sources of information. (App. at 5.)
8 However, Evans cites no authority in support of her contention that
9 reference to the case, which was a matter of public record and was
10 not the basis for any finding, was improper. Nor, to the extent
11 that Evans makes such a contention, is the admonition a basis for a
12 finding of personal bias or prejudice.

13 Finally, the court finds no merit to the theory advanced by
14 Evans that Judge Fitzgerald's consent to hear a related case
15 amounts to grounds for disqualification under 28 U.S.C. § 47, as
16 the instant case is not an appeal from another decision issued by
17 Judge Fitzgerald. (App. at 6.) Nor does the court find merit in the
18 contention that Judge Fitzgerald's consent to hear the case
19 violates the Fourteenth Amendment, as the court finds nothing
20 improper about the transfer. (App. at 6-7.)

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1 **III. Conclusion**

2 For the reasons set forth herein, Evans' ex parte application
3 to disqualify Judge Fitzgerald is DENIED and the court leaves
4 undisturbed the December 23, 2013 transfer of the case to Judge
5 Fitzgerald.

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7 IT IS SO ORDERED.

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10 Dated: January 9, 2014


DEAN D. PREGERSON
United States District Judge